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The implementation of international humanitarian law by Switzerland

Voluntary report
of the Federal Council

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Preface



This report is the result of a promise. When I [addressed](#) the attendees at the 33rd International Conference of the Red Cross and Red Crescent on 9 December 2019 in Geneva, I encouraged states to draw up voluntary reports on the status of national implementation of international humanitarian law (IHL). As a result, I committed to publishing a voluntary report on IHL implementation by Switzerland in 2020.

Foreign policy and domestic policy are inextricably linked. That's democracy at work, where the populace, acting through legitimate government institutions, strives to develop policy that is consistent at national and international level. So strengthening IHL begins with implementing international obligations at the national level.

Switzerland is in a good position to promote IHL. This country is well known for its neutrality, humanitarian tradition and role as the depositary state of the Geneva Conventions. Complying with, strengthening and promoting IHL are therefore among Switzerland's foreign policy priorities. I made this promise in 2019, appropriately enough, which is when we commemorated the 70th anniversary of the Geneva Conventions together with the international and national community.

What follows is an overview of IHL implementation by Switzerland. This report was prepared by the Interdepartmental Committee for International Humanitarian Law and approved by the Federal Council. I hope that it will inspire other states to carry out this same exercise, which will provide a framework for discussing good practices and implementation challenges and finding common solutions. IHL saves lives every day. It prevents and reduces suffering in war, which in turn contributes to peace and security. And this is why respecting and ensuring respect for IHL is fundamentally important.

A handwritten signature in black ink, appearing to read 'Cassis', with a long horizontal stroke extending to the right.

Ignazio Cassis
Federal Councillor
Head of the Federal Department
of Foreign Affairs

Executive summary

Under common Article 1 of the Geneva Conventions and customary international humanitarian law, states must respect and ensure respect for international humanitarian law (IHL). This obligation has both internal and external dimensions. Internally, it requires states to take measures to ensure IHL is respected by their armed forces, other persons and groups acting on their behalf, and their populations as a whole. Externally, states must not encourage, aid or assist in violations of IHL by parties to a conflict. States must also do everything reasonably in their power to prevent IHL violations and bring them to an end.

This report provides an overview of IHL implementation by Switzerland. It was prepared by the Interdepartmental Committee for International Humanitarian Law (ICIHL) and approved by the Federal Council (Swiss government). The report, divided into seven sections, looks at the most prominent examples of good practice in this regard and the issues at stake, covering the following key topics:

1. Introduction:

this report provides an overview of IHL treaties that apply to Switzerland. It explains how Switzerland incorporates IHL into its national legal system, and it sets out the applicable national rules.¹

2. Specific protection:

Switzerland has taken measures to ensure the red cross emblem is used properly and to safeguard cultural property, thus affording them the specific protection conferred under IHL.

3. Rules governing the means and methods of warfare:

IHL rules on the conduct of hostilities regulate and limit the means and methods of warfare, including weapons that the parties to an armed conflict may use. In any armed conflict, the parties do not have an unlimited right to choose the means and methods of warfare. Switzerland is party to a series of treaties that prohibit or limit the use of certain weapons and has a procedure for assessing new means and methods of warfare. It also restricts the export of both war materiel and private security services.

4. Prosecuting serious violations of IHL:

serious violations of IHL are war crimes. Prosecuting these serious violations is crucially important in efforts to ensure IHL compliance. The perpetrators of such crimes must be prosecuted and punished by states. Switzerland has the laws, tools and mechanisms necessary to prosecute war crimes at the national level. Internationally, it works to combat impunity.

5. IHL dissemination and training:

as part of their duty to ensure compliance, states are required to disseminate information on IHL. Accordingly, Switzerland has incorporated IHL into military training programmes. The Swiss Armed Forces also has legal advisers who have received advanced IHL training and can assist commanding officers.

6. Support for IHL implementation:

certain entities can help the national authorities to implement IHL. The 26th International Conference of the Red Cross and Red Crescent recommended that states create national committees tasked with advising and helping governments to implement and disseminate IHL. Switzerland heeded this recommendation, creating the ICIHL. It is also supported by the Swiss Red Cross. In addition, Switzerland assumes the secretariat of the International Humanitarian Fact-Finding Commission and actively supports its work.

7. Other measures to ensure respect for IHL:

Switzerland has adopted a set of legal and practical measures aimed at ensuring compliance with IHL at national and international level. It encourages parties to armed conflicts to respect IHL rules, particularly with regard to protecting the civilian population, medical mission and humanitarian access. It also supports processes designed to prevent and deal with widespread violations of IHL. Under certain circumstances, Switzerland carries out diplomatic demarches and publicly condemns violations.

¹ The table in the annex contains the list of implementing legislation and other measures taken by Switzerland, with references to relevant websites, including regarding the protection of victims of armed conflict, of children, and missing persons.

By virtue of writing this voluntary report, the ICJHL enhanced the dialogue among its members about IHL implementation by Switzerland. The Committee now possesses a well-developed and shared understanding of good practices and of the main implementation-related challenges that Switzerland faces. On that basis, it has created an action plan setting out specific measures that will strengthen Switzerland's efforts in relation to IHL. One of these measures is to support other national IHL committees as they prepare their own voluntary reports. Switzerland encourages all states that have not yet done so to carry out this exercise. The resulting reports could foster intergovernmental dialogue on good practices and the measures needed to improve IHL implementation and compliance. This would strengthen IHL and, ultimately, provide better protection for the victims of armed conflicts.

Glossary

| | |
|--------|--|
| AP I | Protocol I additional to the Geneva Conventions of 1949 |
| AP II | Protocol II additional to the Geneva Conventions of 1949 |
| Art. | Article |
| ATT | Arms Trade Treaty |
| CCW | 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons |
| CPPA | Federal Act on the Protection of Cultural Property during Armed Conflicts, Disasters and Emergencies |
| CWC | 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons |
| DDPS | Federal Department of Defence, Civil Protection and Sport |
| ECPS | Export Controls and Private Security Services Section (part of the FDFA) |
| FDFA | Federal Department of Foreign Affairs |
| ICC | International Criminal Court |
| ICIHL | Interdepartmental Committee for International Humanitarian Law |
| ICoC | International Code of Conduct for Private Security Service Providers |
| ICoCA | International Code of Conduct for Private Security Service Providers' Association, based in Geneva |
| ICRC | International Committee of the Red Cross |
| IHFFC | International Humanitarian Fact-Finding Commission |
| IHL | International humanitarian law |
| IHRL | International human rights law |
| MCC | Military Criminal Code |
| NGO | Non-governmental organisation |
| OAG | Office of the Attorney General of Switzerland |
| OPCW | Organisation for the Prohibition of Chemical Weapons |
| PCP | Protection of cultural property |
| PMSC | Private military and security companies |
| PSSA | Federal Act on Private Security Services Provided Abroad |
| SCC | Swiss Criminal Code |
| SRC | Swiss Red Cross |
| UN | United Nations |
| UNESCO | United Nations Educational, Scientific and Cultural Organization |



1. Introduction

1.1 Definition

International humanitarian law (IHL), also called the law of war and *jus in bello*, is a set of rules that seek to limit the effects of armed conflict. It protects certain categories of people and property and restricts the means and methods of warfare.

IHL applies only to armed conflict. It is a legal term that refers to 'international' armed conflicts – between two or more states – and 'non-international' armed conflicts – between government forces and organised armed groups or between the armed groups themselves. It does not cover situations of internal disturbance and tensions, such as isolated acts of violence. It is binding upon all parties as soon as an armed conflict breaks out, regardless of its legitimacy, the extent to which the parties acknowledge its existence, and the root cause of the violence.

IHL is based on international treaties and customary international law.² The four Geneva Conventions of 1949 and their three additional Protocols of 1977 and 2005 are the pillars of IHL. These key instruments are supplemented by other IHL treaties that prohibit or limit the use of means and methods of warfare and protect certain categories of people and property.

The duty to implement IHL lies first and foremost with states. Common Article 1 of the Geneva Conventions and customary international humanitarian law both require states to respect and ensure respect for IHL. They are required to take a series of both legal and practical measures – in times of peace and armed conflict – designed to ensure that these rules are implemented.

In armed conflicts, cyberspace is becoming another operational domain alongside traditional ones (space, air, land, sea, electromagnetic space and information space). Once an international or non-international armed conflict factually exists, IHL is the main body of international law that governs cyber operations that have a nexus with the conflict. Existing IHL, notably its fundamental principles, imposes significant limitations for conducting cyber operations in armed conflicts. While in most cases, the way existing IHL applies in cyberspace is clear, there are various outstanding issues that still need to be clarified and discussed by states.³

→ For more information on IHL and its applicability, sources and relationship with other branches of international law such as international human rights law (IHRL), see [The ABC of International Humanitarian Law](#) and the corresponding web pages of the Swiss Federal Department of Foreign Affairs ([FDFA](#)) and the Swiss Red Cross ([SRC](#)).

² For an overview, see the ICRC's website: (i) [the IHL treaty database](#) and (ii) [the ICRC's study on customary IHL](#).

³ Switzerland is involved in the work of the Group of Governmental Experts and the Open-Ended Working Group, whose mission is to analyse developments in the field of information and telecommunications in the context of international security. Through its work, Switzerland encourages the recognition of the applicability of IHL to cyberspace, and it is helping to clarify how IHL actually applies: <https://www.un.org/disarmament/ict-security>. Switzerland also spearheaded the [Geneva Dialogue on Responsible Behaviour in Cyberspace](#). This initiative aims to analyse the roles and responsibilities of states, the business sector, civil society and the academic and tech communities in order to contribute to greater security and stability in cyberspace.

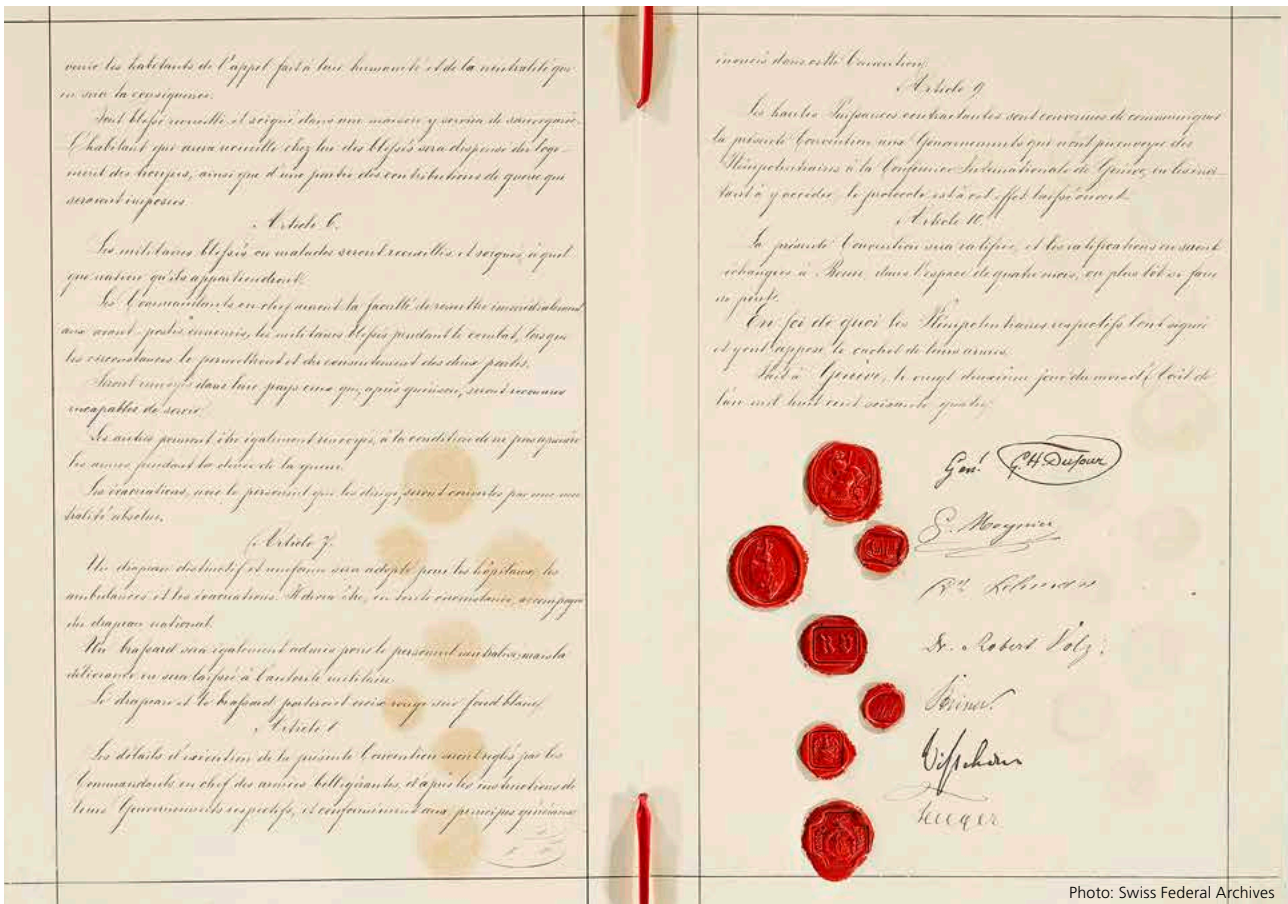


Photo: Swiss Federal Archives

1.2 IHL rules that apply to Switzerland

Switzerland is party to a series of IHL treaties in addition to the Geneva Conventions and their additional Protocols. These include the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, the 1980 Convention on Certain Conventional Weapons, the 1993 Chemical Weapons Convention and the 1998 Rome Statute of the International Criminal Court.

Incorporating IHL into a national legal system is at once a legal and political endeavour that follows national procedures. Switzerland has a monist legal system.⁴ This means that the provisions of international treaties become an integral part of Swiss law as soon as the treaty enters into force. Unlike in a dualist system,⁵ in general⁶ it is not necessary to transpose an international law into national law by enacting additional legislation.

Good practices

Many international treaties contain programmatic rules and provisions applying to states which need to be fleshed out in national legislation. Before ratifying a treaty, the Federal Council – Switzerland’s executive body – must therefore ensure that the treaty’s provisions are in line with Swiss law. A number of IHL treaties that have come into force have resulted in the enactment of Swiss implementing legislation.

- The Annex contains an overview of IHL treaties that apply to Switzerland along with the implementing measures, including relevant national legislation.

⁴ Austria, for example, also has a monist system.

⁵ In a dualist system, international laws do not acquire the force of law until they have been incorporated into national law by way of an internal legislative instrument. The United Kingdom, for example, has a dualist system.

⁶ Rules of international law, which are sufficiently specific and precise to create rights and obligations allowing individuals and legal entities to bring an action before the courts or administrative bodies, are directly applicable. Programmatic rules or provisions addressed to states are not directly applicable. Such provisions need to be fleshed out in legislation before they can be relied upon before the courts or administrative bodies.

2. Specific protection



In times of armed conflict, IHL protects people who are not, or are no longer, taking part in hostilities, together with civilian property. Various categories of people⁷ and property⁸ are accorded specific protection. In some cases they must be marked with a distinctive sign for this purpose. Switzerland has taken measures to ensure that the red cross emblem is properly used (2.1) and cultural property is safeguarded (2.2).

⁷ Medical workers, the sick and wounded, missing persons, women, children, refugees and journalists.

⁸ Medical transport vehicles and units, cultural property, civil defence facilities, objects indispensable to the survival of the civilian population, the natural environment and works and installations containing dangerous forces (such as nuclear power plants and dams).

2.1 Red cross emblem

IHL legal framework

Four distinctive emblems are recognised under IHL: the red cross, the red crescent, the red crystal and the red lion and sun on a white ground. Only the first three are still in use today. Under the Geneva Conventions and the additional Protocols, the emblems have two main uses. In periods of armed conflict, the emblems are a visible sign of the protection afforded by IHL to medical units and transports ('protective use'). The emblems are also used by the National Red Cross and Red Crescent Societies to identify themselves ('indicative use'). The emblems must be clearly defined so as to avoid any risk of confusion. The emblems themselves must also be protected: any misuse, even in peacetime, can reduce the effectiveness of humanitarian aid and the protection it provides. All states are therefore required to lay down rules on the proper use of the emblems in national law.

Overview of IHL implementation by Switzerland

The emblem is protected primarily by the [Federal Act of 25 March 1954 on the Protection of the Emblem and Name of the Red Cross](#) (SR 232.22). This Act provides that the emblems may be used to protect specific individuals and property in times of armed conflict. It also provides that only Swiss and international Red Cross entities are permitted to use the emblems for indicative purposes. Finally, the Act seeks to prevent misuse of the emblems by prohibiting their unauthorised use and setting out the penalties for contravention. The two main types of misuse are making use of an imitation (using a sign that, because of its shape and/or colour, may cause confusion with one of the distinctive emblems) and

improper use (the use of the emblem by people or entities that are not entitled to do so, such as pharmacies and private doctors).

Good practices

The Swiss Red Cross (SRC) plays a key role in ensuring the emblem is used correctly. In the event of misuse, Art. 7 of the [Regulations of 28 June 2014 Governing the Red Cross Emblem](#) (SR 232.221) sets out the measures that may be taken by the SRC, including issuing a written warning. Once it becomes aware of an instance of imitation or improper use, the SRC may send a notice to the person, company or organisation concerned, requiring them to stop displaying the sign, for example by withdrawing a product or modifying a logo. If it is met with a refusal to take the requested measures, it may initiate civil or criminal proceedings. The Federal Supreme Court, which is Switzerland's highest judicial authority, ruled that the SRC, as the National Society, had the exclusive right to use the red cross in Switzerland and was the only organisation that could authorise third parties to use it, subject to certain conditions.⁹ Third parties are therefore prohibited from using any type of red cross, regardless of shade or shape, on any type of white ground, for their own purposes.

⁹ Excerpt from the First Civil Law Division's [ruling](#) (fr only) in the case A. SA v. Verein Schweizerisches Rotes Kreuz (civil law appeal) 4A_41/2014 of 20 May 2014.

2.2 Cultural property

IHL legal framework

IHL accords various levels of protection to cultural property (PCP). Article 2 of the 1954 Hague Convention (SR 0.520.3) provides that all cultural property must be afforded general protection. This protection is based on the obligation to respect and safeguard cultural property.¹⁰ Preparatory measures to be taken in peacetime to safeguard cultural property include compiling inventories, planning emergency measures, affixing a distinctive emblem (a blue and white shield)¹¹ and designating authorities responsible for PCP.¹² Some types of cultural property may, in addition to general protection under Art. 2, be afforded special or enhanced protection.¹³

Overview of IHL implementation by Switzerland

Switzerland is party to all IHL treaties addressing PCP in the event of armed conflict (Annex). It meets its international obligations, in particular, through the [Federal Act of 20 June 2014 on the Protection of Cultural Property during Armed Conflicts, Disasters and Emergencies](#) (CPPA, SR 520.3).¹⁴ Switzerland has a federal political system, and PCP activities take place at all levels of state. The federal government, the cantons and the communes have responsibilities in this regard, and can draw on the support of numerous cultural institutions and associations.

To protect cultural property from the potential impact of an armed conflict, those responsible for PCP have taken various preventive measures. These include:

- ▶ drawing up an inventory of important cultural heritage in Switzerland, at both the national level (class A property) and regional level (class B property);
- ▶ preparing microfilms and PCP security documentation that could be used to restore damaged or destroyed cultural property;
- ▶ marking cultural property in peacetime. The 1954 Hague Convention allows states to decide how to mark their cultural property (apart from cultural property

subject to special or enhanced protection). Under Switzerland's CPPA, the cantons may choose to affix, in times of peace, a distinctive emblem to cultural property of national importance located within their borders (Art. 11). In order to ensure consistency and avoid misuse, the Federal Department of Defence, Civil Protection and Sport (DDPS) set out the visual and technical requirements (such as size and colour) in the [Ordinance of 14 November 2017 governing the identification of cultural property and staff responsible for protecting cultural property](#) (SR 520.312);

- ▶ PCP instruction and training for members of the armed forces, civil defence staff, cultural institutions and civilians (section 5).

In order to ensure compliance with these measures, the CPPA sets out the criminal penalties that may be imposed against anyone who misuses a distinctive emblem or hinders or opposes the implementation of protective measures.

Good practices

Over the years, Switzerland has developed innovative measures in its approach to PCP. The country's PCP inventory, for example, includes some 3,500 cultural assets of national importance (class A property) which may also be accessed in the [geographical information system](#). This platform uses maps and other geographical data to make it easier for users to locate cultural property on Swiss territory and identify potential natural hazards. In addition to meeting the requirements set out in IHL treaties, the CPPA allows Switzerland to offer safe havens for cultural property from other countries. Under these provisions, Switzerland can make safe havens available for the cultural property of other countries which is threatened by an armed conflict, natural disaster or emergency. Currently, some 320 such safe havens throughout the country are available to protect movable cultural property of national significance.

Internationally, Switzerland promotes the universal adoption and implementation of the 1954 Hague Convention and its Second Protocol of 1999. It also supports the work of UNESCO through financial contributions. This funding supports the political dialogue surrounding PCP,¹⁵ PCP training in peacekeeping operations and the adoption of national implementing legislation through the efforts of national IHL committees.¹⁶ At the same time, Switzerland offers its expertise in protecting endangered cultural heritage. It is providing expert assistance to a number of governments, cultural institutions and universities in creating inventories, microfilming and delivering training to civilian and military personnel. It

10 The 1977 Protocols additional to the Geneva Conventions also contain provisions on protecting cultural property in times of armed conflict (see Art. 53 AP I and Art. 16 AP II).

11 More specifically, the distinctive emblem takes the form of "a shield, pointed below, persaltire blue and white (a shield consisting of a royal blue square, one of the angles of which forms the point of the shield, and of a royal blue triangle above the square, the space on either side being taken up by a white triangle)" (Art. 16 of the Convention).

12 See Art. 5 of the Second Protocol of 1999 to the 1954 Hague Convention.

13 Cultural property that is not used for military purposes and is situated at an adequate distance from military objectives may be placed under 'special protection'. This provides it with immunity from any act of hostility directed against such property and any use for military purposes (see Chapter II of the Convention). Because this protection system has produced little in the way of results, the Second Protocol of 1999 set out a new system of 'enhanced protection'. This form of protection applies only to cultural heritage of the greatest importance for humanity and cultural property that is not used for military purposes. For cultural property to be placed under enhanced protection, the authorities of the state in which it is located must request its inclusion in the [list of cultural property under enhanced protection](#) kept by the Committee for the Protection of Cultural Property in the Event of Armed Conflict (see Chapter 3 of the Second Protocol).

14 The scope of this Act is broader than just armed conflict. It also includes PCP in the event of disasters or emergency situations.

15 For example, Switzerland hosted an [international UNESCO conference](#) in Geneva to mark the 20th anniversary of the Second Protocol in April 2019. This event brought together government representatives, experts and other stakeholders, who discussed PCP-related challenges and achievements.

16 For more information on the role of the national IHL committees, see section 6.1.

is also supporting specific projects designed to safeguard and reconstruct cultural heritage in Yemen, Afghanistan, Myanmar and Mali.

To provide a framework for its national and international commitment to PCP, the Federal Council adopted a [Strategy for the Protection of Endangered Cultural Heritage 2019–23](#). This document sets out Switzerland’s position on PCP and the specific areas in which it takes action. The strategic goals include encouraging synergies within the Federal Administration, providing Swiss expertise and support to its international partners and determining how Switzerland can play an active and coherent role in international forums.

Challenges

The long-term preservation of digital cultural property requires novel strategies and methods that differ significantly from those used to preserve tangible property. The question of how to handle digital collections was addressed as part of the 2016–21 PCP inventory review. The Strategy for the Protection of Endangered Cultural Heritage 2019–23 also proposes the development of a safe haven project for digital cultural property that would establish the necessary infrastructure to protect data in the event of a natural disaster or emergency.



Photo: DDPS

3. Rules governing the means and methods of warfare

IHL rules on the conduct of hostilities regulate and limit the means and methods of warfare, including weapons that the parties to an armed conflict may use. In any armed conflict, the parties do not have an unlimited right to choose means and methods of warfare.¹⁷ Switzerland is party to a series of

treaties that prohibit or limit the use of certain weapons (3.1) and has a procedure for assessing new means and methods of warfare (3.2). It also restricts the export of both war materiel (3.3) and private security services (3.4).¹⁸

17 Art. 22 of the Regulations Concerning the Laws and Customs of War on Land annexed to the Hague Convention (IV) and Art. 35(1) AP I.

18 The emphasis here is on the restrictions imposed to ensure compliance with IHL, although Switzerland also imposes restrictions on exports of war materiel and private security services on other legal grounds, such as IHRL.

3.1 Specific rules governing certain weapons

IHL legal framework

In general, weapons that are indiscriminate or that cause unnecessary suffering are banned under IHL.¹⁹ It is also forbidden to use means or methods of warfare that are designed, or that can be expected, to cause widespread, long-term and severe damage to the natural environment.²⁰ Over the years, specific treaties have banned the use of certain weapons because of their devastating effects,²¹ including, for example, biological weapons, chemical weapons, blinding lasers, anti-personnel mines and cluster munitions. Some of these prohibitions can now be considered part of customary international law.²²

Overview of IHL implementation by Switzerland

Switzerland is party to a series of treaties that prohibit or limit the use of certain weapons. These treaties include (see Annex for a complete list):²³

- ▶ the 1925 Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of

Bacteriological Methods of Warfare;

- ▶ the 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological Weapons;
- ▶ the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons (CCW);
- ▶ the 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons (CWC);
- ▶ the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction;
- ▶ the 2008 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Cluster Munitions.

Switzerland has adopted numerous implementing measures at both the legislative and administrative levels (Annex). For example, Switzerland amended the [Federal Act of 13 December 1996 on War Materiel](#) (SR 514.51) after ratifying the Convention on Cluster Munitions in 2012. It also destroyed its stocks of cluster munitions, completing this task in August 2018. In terms of criminal law, Switzerland has put in place the necessary legislation to prosecute serious violations of

19 Art. 35 para. 2 and Art. 51 para. 4 let. b and c AP I, the Declaration Renouncing the Use, in Time of War, of Explosive Projectiles (also called the St Petersburg Declaration), and rules 70 and 71 of the ICRC's study on customary IHL, see footnote 2 above.

20 Art. 35 para. 3 AP I and rule 45 of the ICRC's study on customary IHL, see footnote 2 above.

21 These treaties also contain provisions that, going beyond IHL, address questions of non-proliferation and disarmament.

22 Chapter IV of the ICRC's study on customary law, see footnote 2 above.

23 In the area of nuclear weapons, in 2018 an interdepartmental working group analysed the provisions of the Treaty on the Prohibition of Nuclear Weapons. In its [report](#), it stated Switzerland's long-standing view that it is difficult to imagine how the use of nuclear weapons could be consistent with the requirements of international law, in particular IHL.

IHL that are punishable under the relevant weapons treaties.²⁴

Good practices

Switzerland is committed to the total elimination of atomic, biological, chemical and radiological weapons ('ABC' weapons). In terms of chemical weapons, Switzerland is committed to strengthening the Organisation for the Prohibition of Chemical Weapons (OPCW), based in The Hague. The OPCW is an international organisation that ensures that member states implement the CWC. Switzerland supported the creation of a [Joint Investigative Mechanism](#), within the OPCW, tasked with identifying the origin of chemical weapons used and the parties responsible. Thanks to this mechanism, the investigation into the alleged use of chemical weapons

in Syria will continue beyond the end of the mandate of the Joint Investigative Mechanism of the UN and the OPCW.

In terms of conventional weapons, for many years Switzerland has been committed to achieving a world free of anti-personnel mines, cluster munitions and other explosive remnants of war. This commitment is embodied in the Mine Action Strategy of the Swiss Confederation 2016–22 which sets out three objectives:

- ▶ the relevant treaties are fully implemented and universally applied;
- ▶ safety from mines, cluster munitions and explosive remnants of war is increased and the conditions for sustainable development improved;
- ▶ ownership of mine action rests entirely with those affected on the ground.

Under the first objective, Switzerland aims to promote compliance with the relevant international treaties by states parties and armed non-state actors. It also appeals to non-state parties to abide by the basic principles and supports efforts to clarify alleged breaches. In implementing this strategy, Switzerland cooperates closely with other governments, international organisations, the International Committee of the Red Cross (ICRC) and civil society. Switzerland contributes between CHF 16 and 18 million each year to mine clearance, awareness raising and local capacity building initiatives and to facilitate the implementation of existing international agreements. Its awareness-raising efforts include IHL dissemination



Photo: UNDP (Tobin Jones)

among armed non-state actors that use mines.²⁵ Switzerland publishes an [annual report](#) that presents an overview of the Confederation's most important achievements in the area of mine action.

Challenges

In today's world, technological advances have given rise to new means and methods of warfare, such as cyberweapons and greater integration of autonomous components in weapons systems. For Switzerland, there is no doubt that IHL applies to these new weapons and to the use of new technologies in war. The challenge lies in knowing how they can be used in a manner consistent with IHL. Switzerland is actively involved in the work of various forums to help clarify these issues. As part of the CCW Group of Governmental Experts, it shares its views on the application of IHL to lethal autonomous weapons systems.²⁶

²⁴ For more information on the criminal prosecution of IHL violations, see section 4.

²⁵ For more information on IHL dissemination, see section 5.

²⁶ Switzerland submitted a working document entitled [A 'Compliance-Based' Approach to Autonomous Weapons Systems](#) to the Group of Governmental Experts.

3.2 Procedure for assessing new weapons

IHL legal framework

Article 36 of Protocol I additional to the Geneva Conventions, which partly reflects customary international law,²⁷ provides that in the study, development, acquisition or adoption of a new weapon, means or method of warfare, every state party is required to assess the extent to which it is lawful. Every state is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by Protocol I or by any other rule of international law. Protocol I does not specify how exactly this determination of the lawfulness of weapons, means and methods of warfare should be carried out. As a result, every state must adopt the administrative, regulatory and other measures that will allow it to fulfil its obligations under Article 36.

Overview of IHL implementation by Switzerland

The procedure for assessing new weapons is set out in the [DDPS Ordinance of 26 March 2018 on the Acquisition, Use and Decommissioning of Military Equipment](#) (Art. 11, SR 514.20). Under this ordinance, the 'Law of Armed Conflict' section of the Armed Forces Staff is responsible for determining whether new means or methods of warfare are prohibited by customary international law or international treaties applicable to Switzerland. To enable them to carry out this assessment independently of the acquisition process, the Armed Forces Staff has access to relevant information, including information on military requirements and the technical features of the weapon in question. It also has the authority to bring in experts to assess potential negative consequences of the use of a new weapon on health or the environment.

Good practices

Under the aforementioned DDPS Ordinance, the procedure for assessing new weapons in the light of international law consists of three steps. It provides that a weapons system must be declared compliant with international law before it is designed, developed or procured and finally introduced into the Armed Forces.

- ▶ *Before the weapon is designed*, the authority must identify which rules of international law must be observed and define how the assessment will be conducted and the requirements that must be met.
- ▶ *Before the weapon is developed or procured*, the authority must assess whether the new weapon can be used in compliance with international law, draw up appropriate regulations and design concepts of operation and training.
- ▶ *Before the weapon is introduced into the Armed Forces*, the authority must determine whether the regulations, concepts of operation and training are sufficient to ensure that the new weapon will be used in compliance with international law.

This three-stage assessment process ensures that all issues of international law are addressed when acquiring or developing new means and methods of warfare.

²⁷ For Switzerland, as a state party to AP I, Article 36 of the Protocol is the applicable rule under which it must determine the lawfulness of new weapons. A number of elements suggest that Article 36 may now be considered part of customary international law. Switzerland believes that there is at least a general obligation to determine the lawfulness of new weapons and methods of warfare under common Article 1 of the Geneva Conventions and in line with the general *pacta sunt servanda* principle. Because states are prohibited from using means and methods of warfare in contravention of IHL, Switzerland believes that good faith implementation of the relevant provisions requires states to systematically assess new weapons and new means and methods of warfare to ensure that they can be used in compliance with IHL in international and non-international armed conflicts.

3.3 International arms trade

IHL legal framework

The Arms Trade Treaty (ATT, SR 0.518.61) governs international trade in conventional weapons, ammunition, weapon parts and components, with a view to reducing human suffering and contributing to international and regional peace, security and stability. Articles 6 and 7 of the ATT lay down strict criteria for the transfer of weapons specifically with a view to avoiding serious violations of IHL. These rules derive in part from states' duty to respect and ensure respect for IHL (section 7), as set out in common Article 1 of the Geneva Conventions and restated in the preamble to the ATT. In accordance with Article 6 paragraph 3, a state party must not authorise a transfer of arms covered by the ATT if it has knowledge that the arms could be used to commit genocide, crimes against humanity or war crimes. If an export is not prohibited under Article 6, the state party must apply the risk assessment criteria set out in Article 7 paragraph 1 letter b: it must not authorise the export if there is an 'overriding' risk that the exported arms could be used to commit or facilitate serious violations of IHL.²⁸

Overview of IHL implementation by Switzerland

In Switzerland, export controls on war materiel are laid down in the [Federal Act on War Materiel](#). Article 22 of the Act provides that the manufacture, brokerage, export and transit of war materiel for recipients abroad shall be authorised if this is not contrary to international law, international obligations, and the principles of Swiss foreign policy. International obligations include the rules set out in the ATT, which Switzerland ratified in April 2015. The export of war materiel is subject to authorisation. Such authorisations are issued by the State Secretariat for Economic Affairs (SECO), which must first consult other relevant agencies within the Federal Administration. In reviewing requests, these agencies must verify whether Switzerland is meeting its international obligations and acting in accordance with its foreign policy. Under Art. 5 of the [Ordinance of 25 February 1998 on War Material](#) (SR 514.511), export requests will be rejected if, for example, the country of destination is involved in an internal or international armed conflict or in the country of destination there is a high risk that the exported war materiel will be used against the civilian population.

28 When ratifying the ATT, Switzerland deposited a [declaration clarifying its interpretation of certain provisions of the ATT](#). In Article 6 paragraph 3, Switzerland understands that the phrase "grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party" encompasses acts committed in international and in non-international armed conflicts, and includes serious violations of common Article 3 of the Geneva Conventions of 1949; as well as, for states party to the relevant agreements, war crimes as described in the Hague Convention IV of 1907 and its Regulations, the additional Protocols of 1977 to the Geneva Conventions and the Rome Statute of the International Criminal Court of 1998. In Article 7 paragraph 3, Switzerland understands the term 'overriding risk' to encompass, "in the light of the object and purpose of this Treaty and in accordance with the ordinary meaning of all equally authentic language versions of this term in this Treaty, an obligation not to authorise the export whenever the state party concerned determines that any of the negative consequences set out in paragraph 1 are more likely to materialise than not, even after the expected effect of any mitigating measures has been considered."

3.4 Private military and security companies

IHL legal framework

Some states assign operations to private military and security companies (PMSCs), including guarding buildings, protecting people, maintaining and operating weapons systems, detaining prisoners and training armed forces. PMSC operations are subject to a number of rules under international law including, in particular, IHL and IHRL. While some rules apply directly to PMSCs and their staff, others apply to states that have dealings with such companies. These include countries that hire PMSCs (contracting states), countries on whose territory PMSCs operate (territorial states) and countries in which the PMSCs are based (home states).

Overview of IHL implementation by Switzerland

Switzerland is committed to promoting respect for IHL and IHRL in situations involving PMSCs, including armed conflicts. Together with the ICRC, it led the process that resulted in the adoption of the [Montreux Document](#) in 2008. This document is divided into two parts: Part One clarifies how existing international obligations apply to PMSC activities, while Part Two sets out various good practices to help states implement their obligations. Around 60 states and several international organisations currently support the Montreux Document. The [Montreux Document Forum](#) was created in 2014. This provides a platform for informal consultation among Montreux Document participants, in order to support the national implementation of the document. It is co-chaired by Switzerland and the ICRC.

On a parallel basis, the FDFA encourages PMSCs to follow up on the Montreux Document, in particular, by signing the International Code of Conduct for Private Security Service Providers (ICoC). This document is the fruit of a multi-stakeholder initiative launched by Switzerland in 2010. Companies adhering to the ICoC undertake to respect IHL and IHRL in providing security services in regions where the rule of law has been compromised. The Geneva-based International Code of Conduct Association ([ICoCA](#)) monitors compliance with the ICoC. In Switzerland, the good practices set out in the Montreux Document have been incorporated into the [Federal Act of 27 September 2013 on Private Security Services Provided Abroad](#) (PSSA, SR 935.41).

Good practices

The PSSA has four main aims: to safeguard Switzerland's internal and external security, achieve Switzerland's foreign policy objectives, preserve Switzerland's neutrality, and guarantee compliance with international law, in particular IHRL and IHL (Art. 1). The PSSA prohibits any individuals and legal entities falling within its scope from carrying out an activity in connection with direct participation in hostilities abroad. It also bans a number of activities that are inconsistent with the aims of the Act, which include ensuring compliance with IHL and IHRL. In order to promote respect for international law

by companies subject to the PSSA, they must become signatories to the Code of Conduct and prove that their employees have received adequate training in IHL and IHRL.

The Federal Council has assigned responsibility for implementing the PSSA to the FDFA's Directorate of Political Affairs, where the Export Controls and Private Security Services Section (ECPS) has also been set up. Companies that wish to provide, from Switzerland, private security services abroad must first inform the ECPS. The ECPS examines incoming declarations and initiates a review procedure where there are indications that the planned activities could be in conflict with the aims of the Act. It also publishes annual [activity reports](#). The ECPS has also defined which topics must be included in IHL and IHRL training courses that PMSC employees receive. Since the companies covered by the Act are active in different sectors and as such, provide different kinds of services, the ECPS has developed a [training system with a modular approach](#). With this system, companies can choose the modules that are relevant to the types of services they provide.

4. Prosecuting serious violations of IHL

Serious violations of IHL – such as deliberately attacking civilians or civilian property, using prohibited weapons, torturing or illegally detaining people, causing forced displacement and recruiting child soldiers – constitute war crimes. To ensure respect for IHL, it is absolutely essential that serious violations such as these are prosecuted. Under IHL, individuals

are individually accountable for war crimes and states are required to prosecute and punish the perpetrators of serious violations. Switzerland has the tools and mechanisms necessary to prosecute war crimes at national level (4.1). Internationally, Switzerland is committed to combating impunity (4.2).

4.1 National criminal prosecution authorities

IHL legal framework

The four Geneva Conventions of 1949 and the additional Protocol I of 1977, along with other treaties and customary international law, set out states' obligations in terms of penal repression of serious violations of IHL. The nature and extent of these obligations vary from treaty to treaty, including their material and personal scope. Under IHL, states have the right – and in some cases the duty – to confer universal jurisdiction on national courts in respect of war crimes.²⁹ This allows a state's prosecuting and judicial authorities to conduct criminal proceedings regardless of where the crime was committed and the nationality of the perpetrator. In addition, criminal proceedings for war crimes are not time-barred under customary international law, which means there is no deadline for prosecuting such crimes following the date on which they are committed.³⁰

Overview of IHL implementation by Switzerland

In addition to the Geneva Conventions and Protocol I, Switzerland is party to a series of treaties that criminalise serious violations of IHL, including with respect to weapons and

cultural property.³¹ Between 1 March 1968 and 31 December 2010, Switzerland prosecuted war crimes on the basis of IHL-related clauses in its [Military Criminal Code](#) (MCC). After ratifying the Rome Statute of the International Criminal Court (ICC) in 2001, Switzerland incorporated war crimes provisions into the [Swiss Criminal Code](#) (Art. 264b to 264j). It also introduced equivalent provisions into the MCC (Art. 110 to 114) to replace some very broad provisions that dated back to 1968.

There are two distinct features in the way war crimes are prosecuted under Swiss law. Firstly, there is no limitation period for the prosecution of war crimes.³² Secondly, Switzerland applies the principle of universal jurisdiction. This means that it can prosecute war crimes committed abroad even if the perpetrator is not a Swiss national and the crime was not committed against Swiss nationals.³³ However, two conditions must be met: the perpetrator (1) must be in Switzerland when the legal proceedings are initiated, and (2) is not extradited or delivered to an international criminal court. The Office of the Attorney General of Switzerland (OAG) is responsible for prosecuting war crimes, although in certain circumstances the military tribunal system has that authority.³⁴

29 Universal jurisdiction in relation to war crimes is based on both treaty rules and customary international law. In terms of treaty rules, the Geneva Conventions and additional Protocol I require states to establish universal jurisdiction for war crimes in their national courts, when war crimes are deemed 'grave breaches' (see Arts. 49/50/129/146 of Geneva Conventions I–IV, and Art. 85 para. 1 AP I). Other treaties also require states parties to provide for universal jurisdiction for certain crimes, including those committed during an armed conflict. These include the Convention against Torture (1984) (Article 5), the International Convention for the Protection of All Persons from Enforced Disappearance (2006) (Article 6) and the Second Protocol of the Hague Convention for the Protection of Cultural Property (1999) (Article 16 paragraph 1). In terms of customary international law, see rules 157 and 158 in the ICRC's study on customary law and footnote 2 above.

30 Rule 160 of the ICRC's study on customary IHL, see footnote 2 above.

31 These include the 1954 Hague Convention for the Protection of Cultural Property and its Second Protocol of 1999; the 1972 Convention on Biological Weapons; the 1976 Convention on Environmental Modification Techniques; Amended Protocol II to the 1980 Convention on the Use of Certain Conventional Weapons (with regard to mines, booby-traps and other devices); the 1993 Chemical Weapons Convention; and the 1997 Ottawa Convention on Anti-Personnel Mines.

32 Art. 101 para. 1 let. c. SCC. A limitation period will apply if the right to prosecute or execute the sentence had become time barred by 1 January 1983 in accordance with the law applicable until that point in time (Art. 101 para. 3 SCC).

33 Art. 264m para. 1 SCC.

34 This responsibility devolves upon the military tribunal system in wartime and/or where the alleged perpetrator or the victim is in the military (i.e. members of the Swiss Armed Forces).



Good practices

The codification of war crimes in Swiss legislation allowed criminal behaviour to be defined with greater clarity and predictably. Given the considerable effort involved in enacting such legislation, Switzerland has retained a catch-all provision covering other violations of IHL.³⁵ This provision is designed to catch future developments in war crimes-related customary international law or treaties ratified by Switzerland.

Challenges

Prosecuting war crimes poses a number of challenges. The task of gathering evidence for crimes committed abroad is

³⁵ The provision concerned is Art. 264j SCC.

especially challenging when the events took place long ago. Cooperation between judicial authorities, for example courts in other countries and international judicial bodies, is essential. Switzerland may provide mutual legal assistance in war crimes cases on the basis of the [Federal Act of 20 March 1981 on International Mutual Assistance in Criminal Matters](#) (SR 351.1). Amendments currently under way should extend the scope of the Act to include mutual assistance in criminal matters not just for states, but also for international courts and other interstate or supranational bodies serving as criminal authorities. Switzerland also supports the Mutual Legal Assistance Initiative ('MLA Initiative'). This international initiative is advocating a new treaty aimed at strengthening the investigation and prosecution of some of the most serious international crimes.

4.2 Taking action at international level

Overview of IHL implementation by Switzerland

The fight against impunity remains one of Switzerland's foreign policy priorities, as part of its broader approach to dealing with the past and preventing atrocities. In its position statements, bilateral demarches and contributions to multilateral forums, Switzerland regularly calls for serious violations of IHL and IHRL to be investigated and for those responsible to be punished. Switzerland supports the work of international criminal tribunals such as the ICC and backs efforts by various states to strengthen their own criminal courts. The Swiss authorities keep the general public informed of their work in this area.

Good practices

Switzerland works to combat impunity by encouraging other states to ratify the Rome Statute of the ICC and incorporate it into domestic law. It has called on the UN Security Council to refer cases to the ICC to ensure that allegations of international crimes are duly investigated.³⁶ It proposed amending Article 8 of the Rome Statute so that intentionally starving civilians in non-international armed conflicts can be prosecuted as a war crime. The ICC Assembly of States Parties unanimously approved this proposal in 2019,³⁷ helping to strengthen the protection of victims of war. The fact that the ICC is now able to prosecute such acts as a war crime will help to prevent this crime and bring justice to victims. Furthermore, Switzerland is committed to ensuring all amendments to the Rome Statute are ratified, so that the ICC can prosecute crimes within its jurisdiction to the fullest extent possible.

At the same time, Switzerland provides political and financial support to international investigative mechanisms. These include the International, Impartial and Independent Mechanism (IIIM) for Syria, established by the UN General Assembly through Resolution A/71/248, and the Independent Investigative Mechanism for Myanmar, created by Resolution 39/2 of the Human Rights Council.

Switzerland also believes in further developing and promoting good practices to protect endangered archives so that information and documents regarding potential violations of IHL can be preserved. At the instigation of Switzerland, an expert group prepared a document called 'Guiding Principles on Safe Havens for Archives at Risk', which was approved by the International Council on Archives in October 2019.

³⁶ In 2013, for example, Switzerland asked the UN Security Council to refer the situation in Syria to the ICC so that it could [investigate allegations of crimes against humanity and war crimes](#).

³⁷ See Resolution [ICC-ASP/18/Res. 5](#) of 6 December 2019.

5. IHL dissemination and training

IHL legal framework

In order to ensure compliance, states are required to disseminate information on IHL. The obligation to raise awareness about IHL applies in both peacetime and wartime.³⁸ It requires states to translate IHL instruments into their national languages. States must also incorporate IHL into military training and, if possible, civilian education programmes. Protocol I also provides that states must make sure that legal advisers are trained to advise commanders in applying the four Geneva Conventions and the Protocol and on the appropriate instruction to be given to the armed forces on this subject.³⁹

Overview of IHL implementation by Switzerland

In Switzerland, various entities are involved in raising awareness about IHL, such as the Armed Forces and the SRC. IHL was incorporated into military training programmes within the Armed Forces on the basis of Regulation 51.007.04 *Legal Bases for Conduct During an Engagement*. All members of the Swiss Armed Forces must pass an introductory course on IHL and receive special IHL instruction as part of their operational training. The Swiss Armed Forces also has legal advisers who have received advanced IHL training. They are assigned to various levels of the Swiss army (brigades, divisions, special forces units and Armed Forces Staff).

Good practices

The Swiss Armed Forces uses a range of practical tools, such as e-learning, to raise awareness of IHL. It has also adopted specific rules, for example on protecting medical missions and cultural property (Annex). Furthermore, it runs in-depth IHL courses specially designed for non-commissioned officers, medical units, legal advisers and commanders. These courses, which are open to participants from Switzerland and abroad, include both the legal adviser seminar run by the International Society for Military Law and the Law of War and CENTROC ('Central Role of the Commander: Accomplish the Mission Respecting the Law').

In addition, the Swiss army runs military exercises and training on the ground on a number of specific topics. For the topic of cultural property, for example, the army teams up with the Federal Office for Civil Protection. These courses are also of interest for civil defence staff and people who work for cultural institutions that are closely related to cultural property, such as employees of museums, libraries, archives and restoration workshops. They draw on a wide range of [training material](#), including fact sheets, 'Forum' documents and guidelines.

Because IHL applies to all parties to a conflict, including organised armed groups in non-international armed conflicts, it is also essential that these groups learn about IHL. Switzerland has supported the work of both the ICRC and Geneva Call in this area for many years. [Geneva Call](#) is a non-governmental organisation (NGO) that engages in dialogue with armed non-state actors in order to encourage them to respect IHL. In pursuit of this objective, it encourages armed groups to sign Deeds of Commitment on specific topics (banning anti-personnel mines, protecting healthcare, prohibiting sexual violence and protecting children) and to incorporate IHL rules in their codes of conduct. Geneva Call carefully monitors implementation of its Deeds of Commitment.



³⁸ The obligation to disseminate IHL is set out in several instruments, such as the Geneva Conventions (I–IV, Arts. 47/48/127/144), Art. 83 AP I, Art. 19 AP II, Art. 25 of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, Art. 6 of the 1980 Convention on Certain Conventional Weapons and Art. 42 of the 1989 Convention on the Rights of the Child.

³⁹ Art. 82 AP I.

6. Supporting IHL implementation

National authorities can draw on the support of certain entities in implementing IHL. Within Switzerland, the government set up the Interdepartmental Committee for International Humanitarian Law (ICIHL) (6.1). It also receives the support

of the Swiss Red Cross (6.2). Internationally, Switzerland actively supports the International Humanitarian Fact-Finding Commission (IHFFC) (6.3).

6.1 Interdepartmental Committee for IHL

IHL legal framework

To properly implement IHL, states must adopt both legal and practical measures that require coordinating various government ministries and other institutions and securing their support. The 26th International Conference of the Red Cross and Red Crescent recommended that states create national committees tasked with advising and helping governments to implement and disseminate IHL.⁴⁰ The Geneva Conventions and the additional Protocols do not oblige states to set up such committees, which means that states are free to decide whether to do so and, if they do, who their members will be and how the committees will operate.

Overview of IHL implementation by Switzerland

In 2009, the Federal Council created the ICIHL in response to the aforementioned recommendation of the 26th International Conference of the Red Cross and Red Crescent. It gave the ICIHL rules of procedure defining its objectives, composition, powers and working methods. The ICIHL consists of representatives of the FDFA; the DDPS; the Federal Department of Justice and Police; the Federal Department of Economic Affairs, Education and Research; the Federal Department of Home Affairs; and the OAG. The ICIHL, working at the national level, is responsible for the exchange of information and the coordination of activities with regard to questions relating to IHL on a national level. It thus promotes and coordinates the consistent implementation of Switzerland's IHL-related obligations. It coordinates

the activities carried out by the various federal authorities and maintains relations with academia, civil society and other organisations working in the area of IHL, including the SRC and the ICRC.

Good practices

Every year the ICIHL draws up an action plan setting out its priorities and objectives. These action plans set out its priority issues in the area of IHL implementation and the measures and activities that it intends to carry out in order to address them. At the start of every year, the ICIHL assesses the extent to which the previous year's action plan was implemented so that it can evaluate progress on the objectives set. The ICIHL has familiarised itself with the ICRC's online platform, the purpose of which is to facilitate interaction with other national IHL committees. It can be used to share good practices and challenges encountered in implementing IHL at national level, with the aim of improving compliance.

⁴⁰ See [Resolution 1 of the 26th International Conference of the Red Cross and Red Crescent](#), which took place in 1995. The resulting recommendations were approved by a panel of experts that was set up by Switzerland: the 26th International Conference of the Red Cross and Red Crescent, Geneva, Switzerland, 3–7 December 1995, *Resolution 1 – International Humanitarian Law: From Law to Action Report on the Follow-up to the International Conference for the Protection of War Victims*, 7 December 1995.

6.2 Swiss Red Cross

IHL legal framework

IHL implementation is one of the primary objectives of the International Red Cross and Red Crescent Movement. The Movement consists of the ICRC, the International Federation of Red Cross and Red Crescent Societies, and the National Societies. The National Societies occupy a privileged position as auxiliaries to the public authorities. Under the Movement's statutes, the role of the National Societies is to support their respective governments in carrying out their humanitarian duties, which include providing emergency relief to victims of armed conflicts, disseminating IHL, protecting the distinctive emblems⁴¹ and promoting IHL compliance.⁴²

Overview of IHL implementation by Switzerland

The SRC was established in 1866. Under the [Federal Decree of 13 June 1951 on the Swiss Red Cross](#) (SR 513.51), the SRC is recognised as the sole National Red Cross Society in Switzerland. As such, it is required to assist the medical service of the Armed Forces in the event of war. The decree also sets out the other activities of the SRC, including voluntary medical services, a blood transfusion service for military and civilian needs, promoting nursing care and other humanitarian tasks. The SRC also includes the Red Cross Service – consisting of some 250 Swiss women with professional medical training – which takes care of the sick and wounded on behalf of the

Armed Forces and carries out other medical tasks. In addition to its medical services, the SRC helps to search for missing people, including in connection with an armed conflict. The SRC's tracing service can be called on by anyone who lives in Switzerland and has lost contact with a family member or other loved one. It conducts searches in conjunction with the ICRC and the tracing services of the 192 National Societies. Lastly, the SRC plays a key role in IHL dissemination and training.

Good practices

As part of its duty to disseminate IHL, the SRC, with the support of the ICIHL, published an [IHL manual for members of Parliament](#), which describes measures that members of Parliament can take to improve IHL compliance. For example, members of Parliament can advocate for the ratification of IHL treaties, ensure IHL obligations are incorporated into national law and monitor implementation by the various authorities concerned. Within schools, the SRC [teaches the fundamental principles of IHL in a fun way](#), through workshops and role-playing games.

Challenges

There is currently no agency or programme that systematically raises awareness of IHL among civilians. The DDPS is the only federal department that delivers specific IHL training, although this course is designed for members of the Swiss Armed Forces. In view of this situation, the SRC and the Swiss delegation [pledged](#) to cooperate more closely on disseminating IHL at the 33rd International Conference of the Red Cross and Red Crescent. Part of their commitment is to use modern, effective communication tools to improve the dissemination of IHL.



Photo: Croix-Rouge Suisse - CRS

41 For more information on the SRC's role in protecting the distinctive emblem, see section 2.1.

42 Art. 3 of the Statutes of the International Red Cross and Red Crescent Movement, which were adopted at the 25th International Conference of the Red Cross and Red Crescent in Geneva in 1986 and amended in 1995 and 2006.



6.3 International Humanitarian Fact-Finding Commission

IHL legal framework

Article 90 of Protocol I additional to the Geneva Conventions provides for the creation of an International Humanitarian Fact-Finding Commission (IHFFC). Its main purpose is to investigate allegations of grave breaches and serious violations of the Geneva Conventions and the Protocol, and to facilitate, through its good offices, the restoration of an attitude of respect for IHL. It was officially created in 1991 and is composed of 15 members serving in their personal capacities. They are elected to five-year terms by those states parties which have accepted the competence of the [IHFFC](#). The IHFFC is the only permanent body set up under an international agreement and is responsible for investigating IHL-related incidents.

Overview of IHL implementation by Switzerland

When it ratified Protocol I, Switzerland issued a declaration acknowledging the competence of the IHFFC as provided in Article 90. In so doing, Switzerland authorised the IHFFC to carry out investigations upon request in connection with any conflict between it and another state that has made the same declaration. In its capacity as the depositary state for the Geneva Conventions and the additional Protocols,

Switzerland performs the function of Secretariat of the IHFFC. The Secretariat's tasks include organising IHFFC meetings and elections of its members, managing its finances and handling communications with states that have acknowledged the IHFFC's competence.⁴³

Good practices

Switzerland is committed to ensuring that the IHFFC is able to carry out its mission and improve compliance with IHL. It encourages states to use the IHFFC's services and is working to raise awareness of the IHFFC and its role and increase the number of states acknowledging its competence. In furtherance of these aims, Switzerland signed a [pledge](#) in support of the IHFFC's work at the 33rd International Conference of the Red Cross and Red Crescent. Switzerland is also part of the Group of Friends within the United Nations that coordinates activities in support of the IHFFC.

⁴³ As at 1 January 2020, 76 states had acknowledged the competence of the IHFFC.

7. Other measures to ensure respect for IHL

IHL legal framework

Under both common Article 1 of the Geneva Conventions and customary international humanitarian law, states must respect and ensure respect for IHL. This obligation has both internal and external dimensions. Internally, it requires states to take measures to ensure IHL is respected by their armed forces, other persons and groups acting on their behalf, and their populations as a whole. Externally, it means that states must not encourage, aid or assist in violations of IHL by parties to an armed conflict. It also demands that states do everything reasonably in their power to prevent and bring IHL violations to an end.

Overview of IHL implementation by Switzerland

Switzerland has put in place a series of legal and practical measures aimed at ensuring respect for IHL both within Switzerland and abroad. In addition to the areas referred to above, Switzerland encourages parties to an armed conflict to comply, in particular, with IHL rules on protecting civilians,

the medical mission and humanitarian access. It also supports processes designed to prevent and address widespread violations of IHL and works to ensure that women are able to contribute actively to preventing conflicts and to peace processes.⁴⁴ Under certain circumstances, Switzerland makes diplomatic demarches and publicly condemns violations through press releases. It also provides financial support to a large number of projects aimed at strengthening IHL.⁴⁵

Good practices

Switzerland is the first country to adopt a strategy on protecting civilians in armed conflict. That document describes various approaches and topics that Switzerland could focus

⁴⁴ [Switzerland's National Action Plan to Implement of UN Security Council Resolution 1325](#).

⁴⁵ For example, Switzerland supports research projects, particularly in Geneva, and supports competitions and training designed to improve IHL skills among students and professionals, as well as a number of IHL initiatives in the digital field to strengthen IHL and clarify its application in practice.



Photo: DDPS

on in order to strengthen its commitment to victims of armed conflicts. For example, at the multilateral level, Switzerland chairs in New York an informal group of countries called the 'Group of Friends on the Protection of Civilians'. Through this role, it is able to positively influence Security Council decisions involving the protection of civilians.

In the area of humanitarian access, Switzerland takes concerted action at the political, legal and operational levels. It regularly underscores the importance of rapid and unhindered humanitarian access in UN forums and in its bilateral dealings with the parties concerned. Furthermore, in collaboration with partner organisations, Switzerland has developed instruments to help secure and maintain humanitarian access. These instruments clarify legal issues and provide practical advice to humanitarian actors on obtaining and retaining humanitarian access.⁴⁶ On the ground, Switzerland seeks to assist and protect conflict victims through its own humanitarian actions and by supporting humanitarian organisations such as the ICRC and [the Centre of Competence on Humanitarian Negotiation](#). This centre is a joint initiative of the ICRC, the United Nations High Commissioner for Refugees, the World Food Programme, Médecins Sans Frontières Switzerland and the Centre for Humanitarian Dialogue. It promotes the exchange and analysis of experiences and practices in humanitarian negotiations to enable humanitarian aid and protection to reach people in need rapidly and without hindrance.

Switzerland plays a leading role in the area of preventing atrocities. It takes action to encourage states to strengthen national mechanisms aimed at preventing widespread violations of IHRL and IHL. It was on the initiative of Switzerland that, in 2013, the international network Global Action Against Mass Atrocity Crimes was created. Both states and civil society organisations are represented within this network. It operates a platform for dialogue, knowledge transfer and best practices in the context of preventing atrocities.

Switzerland has played a pioneering role on the issue of dealing with the past. Its work includes running an annual course on this topic for high-level delegations from other countries. At the bilateral level and upon request, the FDFA advises and supports political processes such as the normalisation process between the Philippine government and the Moro Islamic Liberation Front and the establishment of a truth and reconciliation commission in Kosovo. At the multilateral level, Switzerland is recognised for its role in developing the normative framework for dealing with the past. Switzerland was also behind the initiative that led to the mandate of a UN Special Rapporteur on the promotion of truth, justice, reparation and guarantee of non-recurrence.

⁴⁶ For more information, see the [Handbook on the Normative Framework](#) and the [Practitioners' Manual on Humanitarian Access in Situations of Armed Conflict](#).

8. Conclusion

Implementing IHL is an ongoing challenge. States are often presented with conflicting requirements, such as providing national security through an army (which requires an arms industry) and working towards a weapon-free world. IHL cannot stop violence in armed conflicts, but it can prevent and alleviate the human suffering they cause. Communities affected by armed conflict are also often hit by economic, environmental or health crises, such as the COVID-19 pandemic. In order to protect these civilian populations, it is essential that all parties to an armed conflict, states as well as non-state armed actors, respect IHL.

How to respect and ensure respect for IHL and, in turn, help build sustainable peace? How to strike the right balance between legitimate security objectives and the requirements of humanity?

This report shows Switzerland's approach. It identifies and explains the measures that Switzerland has taken to respect and ensure respect for IHL. This responds to common Article 1 of the Geneva Conventions. In Switzerland it is also part of the resolve 'to strengthen liberty, democracy, independence and peace in a spirit of solidarity and openness towards the world' – as declared in the Preamble to the [Swiss Constitution](#).

Switzerland thus works to prevent causes of conflict (poverty reduction, sustainable development, good offices, dealing with the past, etc.), to limit the impact of armed conflicts (protecting people and cultural property and rules on the means and methods of warfare, rules on weapons and the arms trade, etc.), to prosecute IHL violations (national and international criminal law, investigative mechanisms, etc.), and to disseminate IHL rules (providing information, training members of the armed forces and other professionals, etc.). These measures require a legal framework, implementing bodies and human and financial resources. Every year, the Confederation incurs CHF 2.7 million in personnel expenditure to support IHL implementation and provides CHF 33.2 million in subsidies in order to finance, either directly or indirectly, IHL activities. This is a very modest investment compared to the cost generated by armed conflicts.

Producing this voluntary report has fulfilled the promise made to the international community at the 33rd International Conference of the Red Cross and Red Crescent in Geneva in December 2019. At the same time, it has also been beneficial at the national level in two respects:

1. the authors of the report (the members of the ICIHL) have developed a better shared understanding of IHL measures and challenges, and good practices have been identified;
2. the ICIHL has adopted a new action plan to consolidate IHL implementation in Switzerland.

The Federal Council hopes that this voluntary report will serve to strengthen respect for IHL in Switzerland and around the world. It may also inspire other states to prepare their own voluntary reports, which will lead to ever more fruitful discussions of best practices. This will strengthen IHL and, ultimately, provide greater protection for victims of armed conflicts.

Annex:

Applicable treaties and implementation measures (Switzerland)

| Topic | IHL treaty | Date of ratification/accession by Switzerland | Implementing legislation | Other measures |
|---|--|---|---|--|
| Protecting victims of armed conflict | Geneva Conventions (I–IV), 1949 | 31 March 1950 | <ul style="list-style-type: none"> ▶ Federal Civil Protection and Civil Defence Act ▶ Ordinance on the Territorial Duties of the Armed Forces | <p>On the implementation of the Geneva Conventions in peacetime:</p> <ul style="list-style-type: none"> ▶ Federal Council Decree on the Application of the Geneva Conventions in the Armed Forces <p>On the protection of civilians:</p> <ul style="list-style-type: none"> ▶ Strategy on the protection of civilians in armed conflicts <p>On humanitarian access:</p> <ul style="list-style-type: none"> ▶ Humanitarian Access in Situations of Armed Conflict – Practitioners’ Manual ▶ Humanitarian Access in Situations of Armed Conflict – Normative Framework |
| | Protocol (I) additional to the Geneva Conventions, 1977 | 17 February 1982 | | |
| | Protocol (II) additional to the Geneva Conventions, 1977 | 17 February 1982 | | |
| | Protocol (III) additional to the Geneva Conventions, 2005 | 14 July 2006 | | |
| Children | Convention on the Rights of the Child, 1989 | 24 February 1997 | | <ul style="list-style-type: none"> ▶ FDFA Action Plan for the protection of children associated with armed forces or groups in armed conflict |
| | Optional Protocol on the Involvement of Children in Armed Conflicts, 2000 | 26 June 2002 | | |
| Missing persons | Rules contained in the Geneva Conventions of 1949 and the additional Protocols | | <ul style="list-style-type: none"> ▶ DDPS Ordinance on Military Identification ▶ Federal Act on the Use of DNA Profiles in Criminal Proceedings and for the Identification of Unknown and Missing Persons | |
| | International Convention for the Protection of All Persons from Enforced Disappearance, 2006 | 2 December 2016 | | |
| Red cross emblem | Rules in the Geneva Conventions of 1949 and the additional Protocols | | <ul style="list-style-type: none"> ▶ Federal Act on the Protection of the Emblem and the Name of the Red Cross ▶ Regulations Governing the Use and Protection of the Emblem and the Name of the Red Cross | |

| Topic | IHL treaty | Date of ratification/accession by Switzerland | Implementing legislation | Other measures |
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| Protection of cultural property | Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954 | 15 May 1962 | <ul style="list-style-type: none"> ▶ Federal Act on the Protection of Cultural Property During Armed Conflicts, Disasters and Emergencies ▶ Ordinance on the Protection of Cultural Property During Armed Conflicts, Disasters and Emergencies ▶ DDPS Ordinance governing the identification of cultural property and staff responsible for protecting cultural property ▶ Federal Act on the International Transfer of Cultural Property | Strategy for the Protection of Endangered Cultural Heritage 2019–23 (fr only) |
| | Hague Protocol for the Protection of Cultural Property in the Event of Armed Conflict, 1954 | 15 May 1962 | | |
| | Second Protocol of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1999 | 9 July 2004 | | |
| Weapons | Declaration Renouncing the Use, in Time of War, of Explosive Projectiles (also called the St Petersburg Declaration), 1868 | 29 December 1868 (adopted by the Federal Council) | | |
| | Hague Conventions: <ul style="list-style-type: none"> ▶ Hague Convention (II) on the Laws and Customs of War on Land, 1899 ▶ Hague Convention (IV) on the Laws and Customs of War on Land, 1907 ▶ Hague Convention (VIII) on Submarine Mines, 1907 ▶ Hague Convention (IX) on Bombardment by Naval Forces, 1907 | <ul style="list-style-type: none"> ▶ 20 June 1907 ▶ 12 May 1910 ▶ 12 May 1910 ▶ 12 May 1910 | | |
| | Hague Declarations: <ul style="list-style-type: none"> ▶ Hague Declaration (IV, 2) Concerning Asphyxiating Gases, 1899 ▶ Hague Declaration (IV, 3) Concerning Expanding Bullets, 1899 ▶ Hague Declaration (XIV) on Explosives from Balloons, 1907 | <ul style="list-style-type: none"> ▶ 29 December 1900 ▶ 29 December 1900 ▶ 12 May 1910 | | |

| Topic | IHL treaty | Date of ratification/accession by Switzerland | Implementing legislation | Other measures |
|-------|---|--|--|--|
| | Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, 1925 | 12 July 1932 | | |
| | Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, 1972 | 4 May 1976 | <ul style="list-style-type: none"> ▶ Federal Act on the Control of Dual-Use Goods, Specific Military Goods and Strategic Goods ▶ Ordinance on the Export, Import and Transit, of Dual Use Goods, Specific Military Goods and Strategic Goods | |
| | Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, 1977 | 5 August 1988 | | |
| | <p>Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, 1980</p> <p>CCW Protocols:</p> <ul style="list-style-type: none"> ▶ Protocol (I) on Non-Detectable Fragments, 1980 ▶ Protocol (II) Prohibiting Mines, Booby-Traps and other Devices, 1980 ▶ Protocol (III) Prohibiting Incendiary Weapons, 1980 ▶ Protocol (IV) on Blinding Laser Weapons, 1995 ▶ Protocol (VI) Prohibiting Mines, Booby-Traps and other Devices, as amended, 1996 <p>CCW, amended Article 1, 2001</p> <ul style="list-style-type: none"> ▶ Protocol (V) on Explosive Remnants of War, 2003 | <p>20 August 1982</p> <ul style="list-style-type: none"> ▶ 20 August 1982 ▶ 20 August 1982 ▶ 20 August 1982 ▶ 24 March 1998 ▶ 24 March 1998 <p>▶ 19 January 2004</p> <p>▶ 12 May 2006</p> | | <p>A 'Compliance-Based' Approach to Autonomous Weapon Systems (working paper submitted by Switzerland to the CCW Group of Governmental Experts)</p> <p>Annual reports on Switzerland's commitment to humanitarian demining</p> |

| Topic | IHL treaty | Date of ratification/accession by Switzerland | Implementing legislation | Other measures |
|--|---|---|--|---|
| | Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons, 1993 | 10 March 1995 | <ul style="list-style-type: none"> ▶ Ordinance on the Control of Chemicals with Civilian or Military Uses ▶ Federal Act on the Control of Dual-Use Goods, Specific Military Goods and Strategic Goods ▶ Ordinance on the Export, Import and Transit, of Dual Use Goods, Specific Military Goods and Strategic Goods | |
| | Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997 | 24 March 1998 | | Mine Action Strategy of the Swiss Confederation 2016–22 |
| | Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Cluster Munitions, 2008 | 17 July 2012 | | |
| | Arms Trade Treaty, 2013 | 30 January 2015 | <ul style="list-style-type: none"> ▶ War Materiel Act ▶ War Materiel Ordinance ▶ Federal Act on Weapons, Weapons Accessories and Ammunition ▶ Ordinance on Weapons, Weapons Accessories and Munitions | Switzerland's Initial Report on Measures Undertaken to Implement the Arms Trade Treaty, 2016 |
| Procedure for assessing new weapons | Rule set out in Article 36 of Protocol (I) additional to the Geneva Conventions of 1949 | 17 February 1982 | <ul style="list-style-type: none"> ▶ DDPS Ordinance on the Acquisition, Use and Decommissioning of Military Equipment | |
| Private military and security companies | | | <ul style="list-style-type: none"> ▶ Federal Act on Private Security Services Provided Abroad ▶ Federal Ordinance on Private Security Services Provided Abroad | Montreux Document International Code of Conduct for Private Security Service Providers |

| Topic | IHL treaty | Date of ratification/accession by Switzerland | Implementing legislation | Other measures |
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| Criminal proceedings | <p>Rome Statute of the International Criminal Court, 1998</p> <p>Amendments to the Rome Statute:</p> <ul style="list-style-type: none"> ▶ Article 8 (2010) ▶ Articles 8bis, 15bis and 15ter (2010) ▶ Article 8 (2017) | <p>12 October 2001</p> <ul style="list-style-type: none"> ▶ 10 September 2015 ▶ 10 September 2015 ▶ 7 July 2020 | <p>On the criminalisation of war crimes:</p> <ul style="list-style-type: none"> ▶ Federal Act Amending Federal Legislation Implementing the Rome Statute of the International Criminal Court ▶ Swiss Criminal Code, Articles 264b to 264j ▶ Military Criminal Code, Articles 110 to 114 <p>Criminal procedure:</p> <ul style="list-style-type: none"> ▶ Swiss Criminal Procedure Code ▶ Military Criminal Procedure Code ▶ Federal Act on the Organisation of Federal Criminal Justice Authorities <p>Mutual legal assistance</p> <ul style="list-style-type: none"> ▶ Federal Act on Cooperation with International Courts for the Prosecution of Serious Violations of International Humanitarian Law ▶ Federal Act on Cooperation with the International Criminal Court ▶ Federal Act on International Mutual Assistance in Criminal Matters | |

| Topic | IHL treaty | Date of ratification/accession by Switzerland | Implementing legislation | Other measures |
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| Translating, disseminating and teaching IHL | Rules set out in the Geneva Conventions of 1949, the additional Protocols and other IHL treaties (see footnote 38) | | | <p>Regulation 51.007.04 'Legal Bases for Conduct during an Engagement', Part 4</p> <p>Document 51.007.03 f 'Basic rules of the international law of armed conflict'</p> <p>Regulation 51.011 f 'Armed Forces rules of engagement'</p> <p>Regulation 51.007.05 f 'The ten basic rules for the protection of cultural property'</p> <p>Documentation 59.020.01 f 'Basic rules of the international law of armed conflict applying to medical services'</p> <p>Regulation 69.003 d 'Military Assistance Service'</p> <p>Document 51.034 f 'Documentation for warrant officers'</p> <p>E-learning course 'International law of armed conflict – basic knowledge for all military personnel'</p> <p>E-learning course 'Commanders' responsibilities under the international law of armed conflict'</p> |
| Supporting IHL implementation | Statutes of the International Red Cross and Red Crescent Movement | | <ul style="list-style-type: none"> ▶ Federal Decree on the Swiss Red Cross ▶ Ordinance on the Red Cross Service | |

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